

REMARKS

Claims 11 to 17 and 19 to 36 are now pending in the present application.

In view of the following, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

With respect to paragraph three (3) of the Final Office Action, claims 13, 14, 22, 23, 27, 29, 32, and 34 were rejected as indefinite under the second paragraph of 35 U.S.C. § 112.

As regards the terms and phrases cited in the Final Office Action as “indefinite and unclear in context”, it is respectfully submitted that the cited terms and phrases are definite and clear as used and as would be understood when each of the rejected claims is read in view of the specification -- which is the proper objective standard.

In this regard, claims 13, 14, 32, and 34 ultimately depend from claim 11. Claim 11 refers to the term “a blurriness” only in a single instance, and claims 13, 14, 32, and 34 each refers to the term “the blurriness.” Similarly, claims 22, 23, 27, and 29 ultimately depend from claim 19. Claim 19 refers to the term “a blurriness” only in a single instance, and claims 22, 23, 27, and 29 each refers to the term “the blurriness.” Thus, it is respectfully submitted that claims 13, 14, 22, 23, 27, 29, 32, and 34 are definite.

Although the rejections may not be agreed with, to facilitate matters, claims 11 and 19 are rewritten to change the term “blurrily imaged” to “imaged”. It is respectfully submitted that the cited terms and phrases are therefore definite, especially to a person having ordinary skill in the art, in view of the foregoing, as well as the remainder of the specification, and withdrawal of the rejections is therefore respectfully requested.

In view of the above, it is respectfully submitted that the presently pending claims comply with the second paragraph of § 112 since a person having ordinary skill in the art would understand what is claimed when the claim is read in view of the specification. See Miles Labs., Inc. v. Shandon, Inc., 997 F.2d 870, 27 U.S.P.Q.2d 123 (Fed. Cir. 1993). In this regard, it is also noted that terms in a claim are to be understood in view of the specification. (See In re Weiss, 26 U.S.P.Q.2d 1885, 1887 (Fed. Cir. 1993) (when interpreting a claim term or phrase, one must “look to the specification for the meaning ascribed to that term”; Board reversed) (unpublished decision); *In re Okuzawa*, 190 U.S.P.Q. 464, 466 (C.C.P.A. 1976) (“claims are not to be read in a vacuum, and limitations therein are to be interpreted in light of the specification”; Board reversed; emphasis in original) (citing *In re Royka*, 180 U.S.P.Q.

580, 582-83 (C.C.P.A. 1974) (claims are “not to be read in a vacuum” and “their terms still have to be given the meaning called for by the specification of which they form a part”; Board reversed; emphasis in original); and *In re Rohrbacher*, 128 U.S.P.Q. 117, 119 (C.C.P.A. 1960) (an “applicant is his own lexicographer and words used in his claims are to be interpreted in the sense in which they are used in the specification”; Board reversed)).

Approval and entry are respectfully requested, as is withdrawal of the indefiniteness rejections.

With respect to paragraph five (5) of the Final Office Action, claims 11 to 17, and 19 to 36 were rejected under 35 U.S.C. § 102(b) as anticipated by Stam et al., U.S. Patent No. 5,923,027.

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102(a), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the prior Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic *necessarily* flows from the teachings of the applied art.” (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

Claims 11 and 19 provide the feature that *the image sensor is focused on an external region beyond the vehicle such that a visual obstruction on the vehicle is imaged.*

It is believed and respectfully submitted that the Stam reference does not identically disclose (or even suggest) the feature that *the image sensor is focused on an external region*

beyond the vehicle such that a visual obstruction on the vehicle is imaged, as provided for in the context of claims 11 and 19. In stark contrast to the present claims, the Stam reference explicitly states that “raindrops and other sources of moisture on the windshield [are] *sharply focused*.” (Stam, col. 3, lines 62 to 63 (emphasis added)). In addition, the Stam reference explicitly states that “objects at the approximate distance of the windshield 26 are *sharply in focus*.” (Stam, col. 4, lines 64 to 65; *see also* Stam, col. 8, line 29, and lines 34 to 35; and col. 10, lines 20 to 22, and lines 26 to 28 (emphasis added)). Thus, the Stam reference describes a system directly contrary to the present claims. That is, objects on the windshield are *sharply focused* in the Stam reference, whereas a visual obstruction on the vehicle is *imaged* in the present claims.

Further, the Final Office Action at page 3 asserts that “sharp focus on specific areas of moisture on the windshield gives less focus on everything else, including (i) the glass windshield, thus the glass windshield [is] imaged ...; and (ii) other areas of moisture on the windshield not in sharp focus, thus the other areas of moisture on the windshield [are] imaged.” It is respectfully submitted that the Stam reference provides absolutely no support for the Office’s assertion. Indeed, as explained above, the Stam reference explicitly states that “objects at the approximate distance of the windshield 26 are *sharply in focus*.” (Stam, col. 4, lines 64 to 65 (emphasis added)). Thus, the Stam reference describes that the windshield and objects on the windshield are *sharply in focus*, which is directly contrary to the Office’s unsupported assertions that the windshield and others areas on the windshield are imaged, as provided for in the context of the presently claimed subject matter.

Therefore, the Stam reference does not identically disclose (or even suggest) the feature that *the image sensor is focused on an external region beyond the vehicle such that a visual obstruction on the vehicle is imaged*, as provided for in the context of claims 11 and 19.

Independent of the above, the Final Office Action at pages 2 to 3 maintains its assertion that *the image sensor is focused on an external region beyond the vehicle*, as in the present claims. The Office maintains its assertion that “[p]ointing the camera [in] a particular direction is focusing on that particular area, which includes ‘an external region beyond the vehicle.’” (Office Action, p. 2). As set forth below, it is respectfully submitted that the Office has not followed the instructions of MPEP § 2111. Specifically, the scope of the claims is determined “not solely on the basis of the claim language, but upon giving claims

their broadest reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in the art.’” (MPEP § 2111).

By maintaining the assertion that the word “focus” may be interpreted as “a point of concentration” to mean merely a direction in which the sensor is pointed, the Final Office Action plainly has not interpreted the scope of the claims in light of the specification. In addition, the Final Office Action at page 5 asserts that the “Examiner can find no ‘explicit definition’ of the word ‘focus’ to mean ‘the difference between a focused image and a blurry image’ or any other equivalent” in the present application.

However, in this regard, the Substitute Specification makes plain throughout that “focus” does not refer merely to a direction in which the sensor is pointed, but instead refers to the difference between a focused image and a blurry image. Specifically, the Substitute Specification states that “[t]he method described below may be used in video sensor systems in motor vehicles, which systems are not focused on the vehicle windshield, but rather on the external region.” (Substitute Specification, p. 2, lines 10 to 12 (emphasis added)).

According to the interpretation of the Final Office Action, which is not conceded by the Applicant, the term “focus” merely means a direction in which the sensor is pointed. However, the above-cited section of the Substitute Specification plainly states that systems are not focused on the vehicle windshield. Thus, according to the Final Office Action, the sensor would not be “focused” (i.e. pointed) at the windshield. However, Figure 1 of the present application plainly shows the image sensor pointed towards the windshield to capture an image of the external region through the windshield. Thus, the interpretation of the Final Office Action is nonsensical and creates an internal conflict between the cited section of the Substitute Specification and Figure 1 of the present application.

Therefore, the Substitute Specification and Figure 1 clearly define a system that is pointed at the windshield, and also “focused” on the external region but not “focused” on the windshield. Accordingly, contrary to the Final Office Action, the Substitute Specification clearly defines the term “focus” to refer to “the difference between a focused image and a blurry image.” Thus, in accordance with MPEP § 2111, it is respectfully submitted that the Office’s convenient “interpretation” has not given the claims their broadest reasonable construction in light of the specification, and therefore, the Stam reference does not identically disclose (or even suggest) the feature that *the image sensor is focused on an external region beyond the vehicle*, as provided for in the context of claims 11 and 19.

Also, the Final Office Action maintains its assertion that spot 70 of the Stam reference is an “external region beyond the vehicle.” (Final Office Action, p. 6). The Final Office Action at page 6 apparently asserts that parts of a three-dimensional water droplet not touching a surface of the windshield are beyond the vehicle. However, parts of a water droplet together form a single droplet, and as a whole object, the water droplet is clearly in contact with the vehicle. In this regard, Figure 3 of the Stam reference clearly indicates that the spot 70 is on the windshield 26, and therefore on the vehicle. Thus, although the spot 70 may be on the exterior of the windshield 26, it is plainly still on the vehicle, and is therefore not in an external region beyond the vehicle. Thus, the Stam reference does not identically disclose (or even suggest) the feature that *the image sensor is focused on an external region beyond the vehicle*, as provided for in the context of claims 11 and 19.

Therefore, the Stam reference does not identically disclose (or even suggest) the feature in which *the image sensor is focused on an external region beyond the vehicle such that a visual obstruction on the vehicle is imaged*, as provided for in the context of claims 11 and 19.

Accordingly, it is respectfully submitted that claims 11 and 19 are allowable for at least the reasons explained above. Claims 12 to 17, and 32 to 36 ultimately depend from claim 11, and claims 20 to 31 ultimately depend from claim 19, and are therefore allowable for at least the same reasons as their respective base claims.

Withdrawal of the rejections of these claims is therefore respectfully requested.

In sum, it is respectfully submitted that claims 11 to 17, and 19 to 36 are allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections and objections be withdrawn. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is respectfully requested.

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Respectfully submitted,

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